Civil Revision No. 8 of 2006

WITH

Interim Relief Appl No. 1677 of 2006

Hon. P.C. Pant, J.

Heard.

This revision is directed against the order dated 23.01.2006, passed in Misc. Case No. 14 of 2004, whereby the application 22-C, moved by the applicant/revisionist (defendant) under Section 5 of the Limitation Act, 1963, for the purposes of permitting him to comply with the proviso of Section 17(1) of Provincial Small Causes Court Act, 1887, is rejected.

Proviso to Section 17(1) of Provincial Small Causes Courts Act, 1887 is a mandatory provision, compliance of which is necessary in moving an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, in the matters of the Small Cases Court suits. Admittely, the said proviso has not been complied with by the applicant/defendant and it is only after five months of filing of the application for setting aside the ex-parte decree, the applicant/defendant has woken up to seek permission to comply with the proviso to Section 17(1) of the aforesaid Act. The compliance of the proviso to Section 17(1) is required to be made in fact either before filing of application under Order IX Rule 13 of the Code or atleast at the time of making that application on that very day. As such, there is no jurisdictional error or any other kind of illegality in the impugned orders, which requires interference of this Court in revisional jurisdiction.

Accordingly, the revision is dismissed in limine.

Dt. 23.02.2006 (P.C. Pant, J.)

Sweta